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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TWB-204
Washington, DC 20554

**Re: Notice of Ex Parte**

**Request to Update Default Compensation Rate for Dial-Around Calls from Payphones**
**WC Docket No. 03-225**

Dear Secretary Dortch:

On July 1, 2004, Carl Wolf Billek of IDT Corporation spoke via telephone with Matthew Brill to discuss issues pertaining to the above-listed docket. Mr. Billek made the following points:

- The Commission should not grant requests for increases in the default dial-around rate because the studies that accompanied the requests were not prepared in a manner consistent with the formula devised by the Commission.

- The Commission should not grant requests for increases in the default dial-around rate because consumers will be harmed.

- An increase in the dial-around compensation rate would have the paradoxical effect of further reducing the use of payphones.

- Many payphones charge only $0.25 per call, which is likely to be lower than the default per-call compensation rate if the Commission increases the default rate. If the Commission increases the default rate, it must implement safeguards to ensure that carriers that remit compensation are not compelled to remit compensation that exceeds the cost of a call from a payphone.

The Commission has defined "fair compensation" as "the amount to which a willing seller (*i.e.*, PSP) and a willing buyer (*i.e.*, customer, or IXC) would agree to pay for the completion of a payphone call." (¶ 57 Third Report and Order, and Order on Reconsideration of the Second Report and Order) It would be inconsistent with the definition of fair compensation to permit PSPs to receive dial-around compensation that is greater than the amount PSPs charge their own (coin) users. Therefore, where a PSP charges less per call than the (revised) per-call rate, PSPs should not be permitted to receive dial-around compensation that exceeds the amount the PSP charges for the cost for the completion of a payphone call. PSPs must be required to provide entities that remit per-call compensation (service providers, clearinghouses, etc.) with a list of ANIs that charge less than the (revised) per-call rate. This list must contain the coin rate for each ANI. Remitting entities would be required to remit per-call compensation only for the amount the PSP charges end users for the cost of completion of a payphone call. Remitting entities would not be required to remit the default per-call rate for the payphones on the PSPs list.

Additionally, the Commission has stated, "the costs of one service should not be cross-subsidized by another service. That is, consumers making one type of call, such as a local coin call, should not pay a higher amount to subsidize consumers that make other types of calls, such as dial-around or toll-free calls." (¶ 57, Third Report and Order, and Order on Reconsideration of the Second Report and Order) While this statement was initially made to address concerns that dial-around compensation was sufficient, as a matter of principle, it applies equally in reverse: the Commission cannot increase the dial-around compensation rate until the PSPs have demonstrated that the dial-around default rate is not compensating PSPs reduced coin rates. To the degree the dial-around compensation rate is subsidizing these reduced coin rates, the subsidy must be removed.

- If the Commission raises the dial-around rate, it must provide sufficient time – one year – to permit calling card service providers to make all necessary changes and deplete existing calling card stock before implementing the default dial-around increase. The changes calling card service providers must make include (1) revising tariffs; (2) reprinting new card packaging and advertising materials; (3) providing notice to card partners for rate increases and renegotiating contracts; and (4) exhausting existing card stocks.

  Like many providers of prepaid calling cards, IDT has millions of calling cards within the distribution chain that list a payphone surcharge based on the card provider's expectation of a $0.24 dial-around rate. Due to the structure of the industry, these cards absolutely cannot be recalled or destroyed. Card providers need time to exhaust their existing stock. If card providers are compelled to charge their listed payphone surcharge rate even though the per-call compensation rate has increased, card providers will lose millions of dollars.

- APCC obfuscates the issue by claiming that cards by certain carriers charge more than the current $0.24 payphone surcharge. Carrier expenses – such as paying IXC and/or clearinghouse fees for tracking and compensating PSPs for dial around calls - ensure that the cost of dial around compensation is considerably higher than $0.24. Additionally, some carriers' use an increased payphone surcharge to offset greatly reduced per minute rates. The fact remains that APCC expects carriers to absorb an increase of up to $0.25 per completed payphone call with absolutely no time to adjust their pricing.

- The economics of a revised per-call rate will grievously harm calling card providers. A prepaid calling card provider may sell a $10.00 card to a distributor for as little as $5.00. If the user of the calling card incurs, for example, five payphone surcharges, the calling card provider will be required to remit approximately $2.50 of its $5.00 gross revenue from the card. Furthermore, the calling card provider will still be required to provide up to $7.50[1] worth of telecommunications service to the card user. This *virtually ensures* that the calling card provider will lose money on the calling card. As a result, calling card providers may have to restrict use of their cards from payphones (thus harming consumers and PSPs) or increase their payphone surcharge significantly to discourage use of calling cards from payphones.

- Contrary to APCC claims, carriers cannot and/or will not increase the payphone surcharge on their prepaid calling cards until they can print new cards with a revised payphone surcharge. Carriers' ability to adjust rates is, in many cases, constrained by tariffs, state calling card regulations and consumer protection laws. In most cases, calling card providers limit revising rates on cards to detariffed per minute international rates which are not actually printed on the card. Where a particular rate is printed on the card, for the reasons stated above, most calling card providers will not increase the printed rate(s).

- Providing a transition period for a new dial-around rate will not have "grave consequences for PSPs and payphone development" as claimed by APCC in its June 28, 2004 *ex parte*. APCC's comments throughout this

[1] This amount would be reduced if the card provider charged the end user more than the proposed default per-call rate. However, even if the calling card provider charged double the proposed default rate, it would still be required to provide $5.00 worth of telecommunications service to the calling card user. As in the example above, this *virtually ensures* that the calling card provider will lose money on this card.

proceeding demonstrate unequivocally that the reduction in PSP revenue and payphone deployment is due to the increased availability and use of wireless services, not the rate of dial around compensation.

- Providing a transition period for a change of this magnitude is not only mandatory to protect calling card providers, it is consistent with past practice. For example, under 47 USC 226, PSPs received 90 days to post disclosures required. Additionally, under 47 CFR 64.704, PSPs received six months from the regulations' effective date to allow consumers to use equal access codes to obtain access to the consumer's desired provider of operator services. IDT's request for a 12 month transition period is reasonable both in light of past precedent and the needs demonstrated by IDT.

- IDT does not oppose implementation of a revised default dial-around rate in the middle of a calendar quarter, provided the requested transition period is granted.

Sincerely,

**/s/ Carl Wolf Billek**

Carl Wolf Billek

cc: Daniel Gonzalez (via email)
Scott Bergmann (via email)
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